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PERSONNEL QUESTIONS: OTHER PERSONNEL QUESTIONS

Administration of justice in the Secretariat

Report of the Secretary-General

INTRODUCTION

1. At its forty-fifth session, the General Assembly considered the report of the Secretary-General on the administration of justice in the Secretariat (A/C.5/45/11 of 19 October 1990). On 21 December 1990, the Assembly adopted resolution 45/239 B, in which it reaffirmed the importance of a just and efficient internal justice system in the Secretariat. It recognized the considerable progress achieved in the administration of justice in the Secretariat, in particular the efficient functioning of the Headquarters Joint Appeals Board and the promulgation of a fully revised set of disciplinary rules. It requested the Secretary-General to continue with reforms in the administration of justice in the Secretariat in accordance with resolution 44/185 B of 19 December 1989 and to establish by 1991 an efficient system for informal settlements of staff grievances as well as a well-functioning disciplinary system. It also requested him to undertake a study of the system of administration of justice, taking into account the concrete suggestions for improvement of the system, inter alia, those regarding the establishment of an office of ombudsman and the functioning of the United Nations Administrative Tribunal, the Committee on Applications for Review of Administrative Tribunal Judgements and the Panel on Discrimination and Other Grievances made by Member States during the forty-fifth session of the General Assembly, and to report thereon to the Assembly at its forty-seventh session.

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* A/46/150.

2. It may be recalled that the Secretary-General instituted a major programme of reform of the functioning of the internal system of administrative justice in 1987. It had been preceded by expressions of serious concern by the General Assembly, the Group of High-level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations, individual Governments, the Administrative Tribunal and staff associations. The decision was taken at that time to streamline procedures, assign appropriate resources, and enhance the working of, in particular, the Joint Appeals Boards, which are crucial to the internal system. Direct responsibility for the functioning of this internal quasi-judicial system was assumed by the Under-Secretary-General for Administration and Management, various other of the related functions remaining with the Office of Human Resources Management, in particular, the initial review of administrative decisions and the defence of claims where a settlement had proved impossible to achieve. The improvement in the functioning of the internal system during this period is self-evident. In this connection, a vast input of voluntary participation by staff members should be acknowledged, together with the full-time endeavours of a relatively small group of dedicated and expert personnel. It is extremely difficult to see how such resources can be further stretched. The complement of posts has not been increased during the past decade despite an increase of several hundred per cent in output. The system is heavily dependent upon allocations of various forms of temporary assistance and on ad hoc arrangements.

3. The Secretary-General has frequently emphasized his commitment to a speedy and effective system of internal administrative justice. He has stated that not only is it important for justice and transparency to prevail within the United Nations as a matter of principle, its maintenance also makes a significant contribution to sustaining consistent and responsible administration and management. Additionally, it enhances the climate of staff-management relations. Thus it has to be seen, inter alia, as a major management tool, sustaining the Organization's effectiveness. The Secretary-General has been gratified by the support given to his endeavours to bring about the various reforms on the part of the Assembly and the various staff associations.

4. Following a brief description of how the established system works, the present report will provide data on the work of the current year, and will conclude with some final reflections.

I. FORMAL AND INFORMAL MECHANISMS FOR DEALING WITH STAFF GRIEVANCES AND APPEALS

5. Problems between staff members and management arise in a multiplicity of situations. Most stem from administrative decisions affecting career prospects or benefits and entitlements: for instance, non-extension of fixed-term contract, selection for a post, classification, computation of the education grant, etc. These often raise questions of law or fact, or both. In regard to these, staff have no external means of redress, and it has always

been perceived that the Organization has a corresponding obligation to ensure just and speedy internal processes.

6. However, other issues that may concern staff members do not necessarily entail strictly legal questions under the Staff Rules. They may derive from qualities in the working environment, human or physical: for example, inter-personal conflicts, or aspects of managerial style. Or, they may arise from a staff desire to change current rules, administrative practices, decisions of general application, situations in the Secretariat: for instance, the situation of women in the Organization, the current system of promotion, the functioning of the mechanisms of staff-management consultations, etc.

7. To meet these problems, a variety of mechanisms exists, both formal and, in the sense of General Assembly resolution 44/185 B, informal. Executive officers and personnel officers are frequently the first line of approach by staff away from the immediate context of the office in which an unresolved problem arises and they are expected - within their powers - to resolve the great majority of difficulties. The Staff Counsellor is also frequently involved in problem-solving. The staff-management mechanisms of consultation provide a second safety-net, where appropriate. Staff representatives, elected for all offices in the Secretariat, may be approached by concerned staff members and may raise matters directly with managers. Failing resolution, the Staff Committee may come informally to the Assistant Secretary-General, Office of Human Resources Management. Should the matter even then remain unresolved, it may go to the Under-Secretary-General for Administration and Management. On rare occasions, such issues may even be brought to the Secretary-General in person. But, in principle, the basic approach is that problems should be resolved as closely as possible to where they have arisen.

8. Broader staff problems may also be raised by individual staff representatives; they may come to the recently installed intra-departmental joint bodies; and may, if there is still dissatisfaction, be raised with the Assistant Secretary-General, Office of Human Resources Management, or with the Under-Secretary-General for Administration and Management. If these approaches still fail to provide redress, they may appear on the agenda of the Headquarters Joint Advisory Committee; if Secretariat-wide, they may also be inserted on the agenda of the Staff-Management Coordination Committee, which meets annually. Occasionally, when an issue has still failed to be resolved, it may come to the Secretary-General in person. Problems affecting particular groups of staff, or particular aspects of administration, are considered by various ad hoc task forces, usually established under the staff-management Joint Advisory Committee, or by specialist internal groups, including the Secretary-General's Steering Committee on the Improvement of the Status of Women or the Ad Hoc Group on Equal Rights for Women. Many career-oriented questions are considered by the joint machinery relating to appointments and promotions. In a number of instances that do not relate to allegations of breach of the Staff Rules, the Coordinator of the Panel of Counsel may be approached by staff members who may be unsure of their situation and where to

go for redress. In short, a full consultative network exists and normally functions effectively, enabling staff and management to resolve problems in a practical and amicable manner, facilitating the work of the Organization. It might be added that these mechanisms tend to be in their most fully developed forms at the main headquarters duty stations. It should also be said that, of course, human factors exist and can make the resolution of issues easier or more difficult, depending on circumstances. It is recalled that what is said above relates to informal, in the sense of non-appellate, processes of grievance resolution.

9. Only a very small percentage of the kinds of matter mentioned above ultimately makes its way into the formal redress and appeal system. In typical cases, the Coordinator of the Panel of Counsel is often consulted by staff who believe that they may have a grievance under the Staff Rules. They are usually referred to one of the panel of volunteers who provide objective and often expert advice and counselling as required and who often seek to resolve disputes in an informal manner. The issue may also be referred to the appropriate Panel on Discrimination and Other Grievances, established by the General Assembly by resolution 31/26 of 29 November 1976, which may investigate and seek to resolve the matter (in many instances, the panels are seized of issues that do not raise questions under the Staff Rules but are of a different nature and they seek to resolve them, so far as they are able to do so).

10. However, the most important mechanism for review of formal staff grievances is the Administrative Review Unit of the Office of Human Resources Management. 1/ The Staff Rules provide, in effect, that the administration should have a final chance to resolve a dispute under the Staff Rules before it enters the appellate machinery. Accordingly, a unit exists in the Office of Human Resources Management that, inter alia, looks into applications for administrative review brought by staff members and, where such applications are, after inquiry, found deserving, to seek to settle them without their being subject to the appellate processes. At the time of related structural reforms in 1987 it was decided by the then Under-Secretary-General for Administration and Management that, constitutionally, this process was essentially a personnel process and that it should remain in the Office of Human Resources Management; though there was unanimity that responsibility for managing the appellate system itself should be transferred away from the line functions of the Office of Human Resources Management to the Under-Secretary-General, who does not have day-to-day responsibility for decision-making in the personnel field, but, instead, exercises a general supervisory authority on behalf of the Secretary-General in all fields of administration. It is the task, therefore, of the Office of Human Resources Management to have this final opportunity to seek to resolve potential appeals without them entering the more formal appellate structures, which ordinarily include the Joint Appeals Boards and the United Nations Administrative Tribunal. The staff of the Administrative Review Unit seeks to conduct, in each instance, a substantive review, carried out in consultation with the office or department that took the decision challenged by the staff member. The outcome of that review is that the decision may be altered or maintained -

in which case the staff member involved receives a full explanation of the reasons why the decision was maintained. If this part of the system works well, the number of meritorious cases reaching the appellate mechanisms is substantially reduced. As will be further developed below, however, the case-load of the Administrative Review Unit has increased steadily over the years and the rate has of late accelerated greatly, without a corresponding increase of resources.

11. Should the Administrative Review Unit for any reason fail to resolve a case, the matter may be brought to the Joint Appeals Board. Four of these entities exist - at New York, Geneva, Vienna and Nairobi. The administration at the various headquarters is responsible for their servicing, both professional and technical. Otherwise, however, every attempt is made to ensure the autonomy of each Board. Each Board is composed of: chairpersons, always at senior levels, identified after staff-management consultation; members appointed by the Secretary-General; and members elected by the staff. To deal with a specific case a panel composed of three members, one from each of the above-mentioned groups, is constituted. The Boards' panels consider cases brought before them on the basis of a quasi-judicial procedure and in accordance with the Staff Rules and their own rules of procedure. They report to the Secretary-General through the Under-Secretary-General for Administration and Management who, on behalf of the Secretary-General, takes the appropriate decision, which is then communicated to all concerned for implementation. Parts of the recent reform programme have led to a radical streamlining of what had become an over-complicated system; to a strict enforcement of time-limits; and to decisions being taken by the Under-Secretary-General in support of unanimous Joint Administrative Board recommendations, except where a major question of law or principle is impinged upon. The intra-administration consultation process is maintained, but has been greatly expedited. There appears, now, to be fairly general satisfaction with this greatly-accelerated part of the process, at least as regards the functioning of most of the Boards. As will be developed below, however, serious problems still affect the working of the Geneva Joint Administrative Board, as was reported to the Assembly at its forty-fifth session (A/C.5/45/11).

12. Should an appellant be dissatisfied with the outcome of the Joint Appeals Board proceedings, he or she, but not the Secretary-General, may appeal to the United Nations Administrative Tribunal, an independent court with members elected by the General Assembly. It issues judgements that are binding on the Secretary-General. Under certain circumstances, the Committee on Applications for Review of Administrative Tribunal Judgements may subsequently be seized of applications for review and a few cases have been considered by the International Court of Justice.

13. It should be mentioned that several additional ad hoc or specialist review and appellate boards also exist to which issues may be referred, rather than to the Joint Appeals Board. The Board also has authority under the Staff Rules to seek to resolve cases coming before it by conciliation.

14. This brief overview of the various mechanisms, formal and informal, established to deal with the whole range of grievances and complaints also indicates the strong emphasis on joint bodies and mechanisms to resolve problems, and their basically voluntary foundations. This has always characterized the Organization's approach. Once the administration has made its last pre-appellate attempt to settle a staff member's grievance (through, usually, the Administrative Review Unit) the matter comes before a joint body. The Organization's experience is that this is the most expedient way of dealing with appeals. The Joint Appeals Boards have acquired a considerable degree of authority within the Secretariat, enjoying the support of both staff and management. Their autonomous, tripartite basis has been underlined by the established tradition of members' independence - no matter from which of the three panels they are drawn; and the vast majority of reports that come to the Under-Secretary-General are unanimous. The reforms made since 1987 have enhanced this process, ensuring regular replenishment of panels; expeditious and streamlined procedures and (except at one Board) compliance with time-limits; and the endorsement, by the administration, of their conclusions save where important questions of law or principle are impinged upon. Members approach their tasks in a responsible and meticulous manner. The quality of the secretariats to the Boards has also been important in this process of reform.

II. FURTHER DEVELOPMENTS DURING THE CURRENT YEAR

15. The number of requests for review of administrative decisions, as a first step in the appeals' process, was 138 during the seven-month period of 1 January to 30 July 1991. Thus, the trend, which had already been noted last year, was maintained towards a substantial increase in the number of requests for review over the average number of 155 requests for each of the years 1985 to 1989. The policy of the Secretary-General is to seek to resolve as many cases as possible at the preliminary stages. As mentioned earlier, this involves a substantive review of each case, conducted in consultation with the office or department that took the decisions challenged by the staff member. As the outcome of that review, the decisions may be altered or maintained, in which case the staff member involved receives a full explanation of the reasons why the decision was maintained. Pressure on the Administrative Review Unit to conduct such substantive reviews has, therefore, been particularly heavy during 1991 owing to the great number of cases. While some additional temporary assistance has been provided, the Unit has been severely hampered by lack of posts and staff. Under the Staff Rules, it must fulfil its tasks according to a strict timetable. At certain periods, when many applications have been received, it has been unable adequately to implement its responsibility of ensuring substantive reviews. If the Unit is unable to undertake this duty the appellate system becomes clogged. This is, now, the remaining major bottleneck in the internal justice system, and only the provision of additional resources will resolve the problem. Every economy, consistent with transparency and efficiency, has been made.

16. There continues to be an increase in the number of cases submitted to the Headquarters Joint Appeals Board: 68 appeals were filed during the first eight months of 1991, 28 per cent more than in 1990. Despite the increased case-load, the rate of disposition of cases has accelerated: 67 cases were disposed of during the first eight months of 1991, as contrasted with 41 during the same period the prior year. The time for completion of an appeal has been reduced - an average of five months in 1991, compared with six months in 1990, down from an average of two years prior to the implementation of the reform programme. Of the 52 cases pending before the Joint Appeals Board, all but four were filed during 1991.

17. In March 1991, the Headquarters Joint Appeals Board adopted comprehensive rules of procedure and guidelines. These have already demonstrated their effectiveness in clarifying areas previously left in doubt or ambiguity, thereby expediting the work of the Board. In May 1991 the Secretary-General appointed a new Board, with an increase in the voluntary membership to 90, thereby distributing more broadly responsibility for the administration of justice. For the first time, a gender balance was achieved, as well as enhanced geographical representation. The Board's replenishment has enabled many more panels to be constituted. Briefing sessions on the appellate process in which Board members, counsel and representatives of the administration participate, have expedited the handling of cases at Headquarters; similar arrangements are to be made at other duty stations. The increased use of computer applications, facsimile transmission and other technological support have diminished delays and enhanced staff productivity.

18. At Geneva, where there had been a considerable number of pending cases in 1990, the membership of the Board was renewed at the end of the year and its secretariat strengthened by the Director-General in early 1991. In March 1991, the Board reviewed all cases before it and constituted panels for all cases that were ready for consideration and established a time-table for such consideration. These measures have not, however, so far resulted in a reduction in the number of pending cases. The current situation has actually worsened, in terms of backlog, since the publication of the previous report of the Secretary-General. At 31 August 1991, 41 cases were pending, compared with about 33 cases at the time of last year's report.

19. The Nairobi and Vienna Boards, which have a very small case-load, have functioned without any major problem.

20. The Secretary-General's policy of accepting unanimous Joint Appeals Board recommendations except where major questions of law or principle are impinged upon, has continued to be applied. During the first eight months of 1991, the Secretary-General took final decisions on 42 reports on appeals 2/ from Boards at Headquarters, Geneva and Nairobi. In 29 cases, the Secretary-General accepted the Board's recommendations in full, in 10 cases he accepted them in part and in 4 cases 3/ he rejected the recommendation in full. In Board reports on two other cases, one was remanded for correction of procedure and one was settled. Decisions were also taken on four reports on requests for suspension of action. In three of these requests, the Board's recommendation

was accepted; in one, it was rejected. The objective that final decisions be taken within an average period of one week, so as to ensure the speedy disposition of cases, continues to be pursued and, on the whole, attained.

21. As regards the Panel of Counsel at Headquarters, the Under-Secretary-General for Administration and Management issued an appeal for new volunteers in May 1991 (ST/IC/1991/35) and this was circulated desk-to-desk at Headquarters and at the major duty stations. During the calendar year 1990, the Coordinator of the Panel received 296 cases, compared with 204 in the previous year. Of those, after consultations, 54 were settled or did not enter the appellate structures. The Coordinator held approximately 580 consultations in respect of these matters.

22. The Panels on Discrimination and other Grievances handled 99 cases during the period under review, apart from informal advice given to staff members whose complaint did not, in the opinion of the panel concerned, constitute a grievance that required investigation and/or further action. The panels at Headquarters and Geneva handled the greater number of cases. The panel at Headquarters received 62 cases, of which 54 were from Headquarters and 8 from other duty stations, and the panel at Geneva received 28 cases. Of the above 90 cases submitted to the Headquarters and Geneva panels, there was 1 that involved allegations of discriminatory treatment based on nationality and 1 of discriminatory treatment based on sex, with the remaining 88 cases coming under the category "unfair treatment/personal relations". At Headquarters, the Coordinator has met regularly with the Director, Staff Administration and Training Division, Office of Human Resources Management, to discuss possible solutions to cases and this has proved to be an additional effective mechanism for informal resolution of staff grievances.

III. DISCIPLINARY PROCEDURES

23. The description given above in regard to the grievance and appellate processes did not refer to the disciplinary process. This has also undergone a complete reform since 1987. Moreover, in compliance with the request of the General Assembly in its resolution 45/239 that the Secretary-General establish a well-functioning disciplinary system, an administrative instruction (ST/AI/371) was issued, which for the first time provides guidelines and instructions on the application of chapter X of the Staff Rules, both for the initial investigation and fact-finding stage as well as for the Joint Disciplinary Committee stage. These had been the subject of exhaustive consultation through the staff-management mechanisms over a protracted period. At the same time, the Instruction established an expeditious procedure for the constitution of ad hoc Joint Disciplinary Committees as and when required. The Instruction also ensures that the basic requirements of due process are afforded to a staff member against whom misconduct is alleged.

24. The ad hoc Joint Disciplinary Committee mechanism that was established in the new chapter X of the Staff Rules, promulgated in 1990, was utilized in 1991 at Headquarters to advise on a number of disciplinary cases that

concerned tax fraud allegations. The ad hoc Committee considered and finalized 29 cases during an approximately three month period. This shows that the new mechanisms can ensure maximum dispatch while providing, at the same time, a fair review by an impartial body. It is most unusual, if not indeed unique, for the Joint Disciplinary Committee at any duty station to have dealt with so many complex cases in such a brief time-frame. As mentioned in last year's report, the secretariats of the headquarters' Joint Appeals Board and Joint Disciplinary Committee have again been consolidated, and these proceedings were therefore conducted in addition to dealing with the Board's case-load. They were greatly facilitated by the partial temporary release of Joint Disciplinary Committee members, of a member of the Panel of Counsel, and by the services of two extremely experienced, legally qualified chairpersons, one being a retired senior staff member.

IV. OBSERVATIONS

25. The preceding paragraphs show that the reform programme in regard to administrative justice in the Secretariat, instituted by the Secretary-General in 1987, is now in place and working reasonably well. As for the increased case-load, while opinions may vary as to the causes, there is a widespread impression among those dealing with these matters in the Secretariat that the increased number of allegations of maladministration does not mean a deterioration in the quality of administrative decision-making, but, rather, that staff may have developed a greater confidence in the redress procedures. Thus one of the Secretary-General's objectives in instituting the reform programme - that it would help in raising the quality of administration - has also been facilitated.

26. This area of administration of internal justice is a good example of the wide-ranging administrative reform programme instituted by the Secretary-General after the report of the Group of High-level Intergovernmental Experts to Review the Administrative and Financial Functioning of the Union Nations. 4/ Procedures have been greatly streamlined and output increased (in this case, by a substantial degree) despite additional workload, and this has been achieved without any diminution of quality, and with - it would appear - an enhanced reputation in the Secretariat. The essential problem is now lack of resources. It is improbable that any further improvement can be achieved without additional posts - especially in the Administrative Review Unit of the Office of Human Resources Management and for the Coordinator of the Panel of Counsel (an institution that has been operating without explicit budgetary recognition since 1984, coordinating the voluntary and habitually constructive work of its many members). Indeed, without further support for the Unit, in particular, there is a serious danger that a growing bottleneck may soon lead to breakdowns in the fully reformed system, which is otherwise now working rather well. Between them, the Unit and the Panel of Counsel carry out a high proportion of the ground-work of identifying problems, helping staff members with grievances, and seeking non-confrontational solutions. Their effective functioning should, in principle, mean a major diminution of cases which enter the formal appellate system.

27. Much thought has been given over the years to this particular objective, and many projects have been formulated to achieve the general desire to resolve as many disputes as possible without litigation. Yet it can probably never be fully attained: meritorious cases will sometimes slip through the administrative "safety-net", however much support is given to its mechanisms; nor will all staff members whose grievances are without objective justification under the Staff Rules accept that fact without testing them to the fullest possible extent. In these circumstances, the Secretary-General's reform programme placed the Administrative Review Unit and the Joint Appeals Boards as the focal centres. The Unit should have the resources and support to conduct effective reviews, resolving as many cases as possible; and the Joint Appeals Boards should ensure that all those cases that have defied administrative review are dealt with expeditiously and fairly by a joint body which enjoys appropriate status and authority. It has proved to be of great importance to ensure that time-limits are complied with, so that problems should not be allowed to fester, undermining morale and debilitating the quality of administration. Now that the other objectives have been (largely) attained - except, at present, at Geneva - the residuary problems, described in the present report, can be identified with some clarity, together with the means necessary for their resolution.

Notes

1/ The Administrative Review Unit has two other principal functions. These are to represent the Secretary-General within the internal appellate mechanisms, and to conduct necessary investigations in regard to disciplinary matters and, where necessary, to represent the Secretary-General therein.

2/ One of these reports covered three cases.

3/ In one of these cases, the Board made no favourable recommendation in respect of the appellant but a general policy recommendation.

4/ Official Records of the General Assembly, Forty-first Session, Supplement No. 49 (A/41/49).